

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LEISURE LIFESTYLES, LLC,

Plaintiff,

v.

HAROLD J. NIMMER and
BARBARA A. NIMMER,

Defendants.

OPINION AND
ORDER
00-C-0185-C

This is a civil action for monetary relief brought by plaintiff Leisure Lifestyles against defendants Harold J. Nimmer and Barbara A. Nimmer, the sellers of a campground purchased by plaintiff. Plaintiff contends that defendants breached a warranty in the purchase agreement to the effect that the campground was in compliance with all applicable laws, ordinances, rules and regulations, when, according to plaintiff, the campground's gray water disposal system was in violation of Wis. Admin. Code § 178.08 at the time of sale. Plaintiff also brings common law claims of strict liability misrepresentation and negligent misrepresentation based on this representation, as well as a claim that Wis. Stat. § 100.18 was violated because the representation was untrue, deceptive or misleading.

The case is before the court on the parties' cross motions for summary judgment. Because I find that the campground was in compliance with all applicable laws, ordinances, rules and regulations at the time it was sold to plaintiff, summary judgment will be awarded to defendants.

For the sole purpose of deciding summary judgment, I find the following facts proposed by the parties to be material and undisputed.

UNDISPUTED FACTS

A. Parties

Defendants Harold and Barbara Nimmer purchased "The Oaks" campground in Rock County, Wisconsin in October 1988. They operated it for almost ten years before selling it to plaintiff Leisure Lifestyles on July 1, 1998. The purchase agreement for the campground contained a provision that "seller hereby represents and warrants the campground is currently operated in compliance with all applicable laws, ordinances, rules and regulations" and another provision under which defendants agreed to indemnify plaintiff for any claims resulting from an inaccuracy or breach of defendants' representations or warranties.

B. Gray Water Disposal System

The Oaks and other campgrounds in Wisconsin use the terms “black water” and “gray water” to refer to the two types of campsite waste. Black water is sewage-type water from toilets; gray water comes from showers and sinks. The campsites at The Oaks have utilized an “in-ground bucket” system for gray water disposal since at least 1970. This type of system consists typically of a five gallon plastic perforated bucket that is buried in the ground, capped and surrounded with gravel. The bucket is connected to a camper’s holding tank with a rubber hose or PVC pipe.

C. Inspection And Licensing of The Oaks

Since 1985, The Oaks has been inspected and licensed by the Rock County Health Department pursuant to an agency agreement with the Wisconsin Department of Health and Family Services. The agreement is currently in force and provides that the Rock County Health Department “will enforce the Wisconsin Administrative Code rules for . . . campgrounds” in Rock County.

On June 22, 1989, during the first Rock County inspection after defendants purchased The Oaks, the inspector noted that a camper on the “Debbie” site was “disposing of gray water on the surface of the ground” and ordered defendants to discontinue this practice. Defendants corrected the condition by redirecting the discharge into an in-ground bucket system on that

site. Subsequently, defendants received an operating permit for the 1989-1990 camping season.

From 1990 through 1998, Rock County inspected The Oaks on a yearly basis and each year approved of the in-ground bucket systems and issued operating permits to defendants. Defendants were in possession of a valid operating permit at the time The Oaks was sold to plaintiff.

D. Post-Sale Developments

In July 1998, soon after the sale of The Oaks to plaintiff, Rock County inspected the campground, found no problems with the method of gray water disposal, and issued plaintiff an operating permit for the 1998-1999 season. On June 28, 1999, Rock County again issued plaintiff an operating permit (for the 1999-2000 season).

In early 1999, the Wisconsin Department of Health and Family Services informed plaintiff that The Oaks' method of gray water disposal did not meet the requirements of state regulations. Plaintiff informed defendants of the department's position, asserting that defendants had violated terms of the purchase agreement. Defendants met later with officials of the Rock County Health Department on June 9, 1999, who told defendants that the campground's gray water disposal systems were in compliance with Rock County's

interpretation of state regulations, that the disposal systems were being used in campgrounds across the state and that an official of the health department would seek further clarification of the matter from the Department of Health and Family Services. On June 28, 1999, the director of the Rock County Health Department requested clarification on the gray water disposal issue from the state department.

On May 22, 2000, Rock County declared that the use of buried perforated containers was “no longer an acceptable practice for discarding gray water” and that all unacceptable gray water disposal systems must be abandoned over a five-year time period, beginning July 1, 2001. The systems must either be replaced with storage tanks or an approved sewage system or they may simply be removed (in which case, gray water disposal would be left up to the campers).

OPINION

A. Summary Judgment Standard

To succeed on a motion for summary judgment, the moving party must show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c); Celotex v. Catrett, 477 U.S. 317, 324 (1986). All evidence and inferences must be viewed in the light most favorable to the non-moving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986).

B. Enforcement Authority

Laws and regulations are passed by the legislature or promulgated by administrative agencies. A specified executive agency is then responsible for enforcing those laws or regulations. That executive agency is the final authority on what complies with the law, subject only to review by the courts.

The Wisconsin legislature has designated the Department of Health and Family Services as the agency responsible for the enforcement of environmental health regulations involving campgrounds. See Wis. Stat. § 254.47. However, the legislature allows the department to delegate this power: “the department may enter into a written agreement with a local health department . . . which designates the local health department as the department’s agent.” Wis. Stat. § 254.69. This authority is further explained in Wis. Admin. Code § HFS 192.04(4)(b): “the agent shall have the authority and responsibility to enforce provisions of s. 254.47, Stats., and subch. VII of ch. 254, Stats., and related administrative rules.”

As permitted by the regulations, the Department of Health and Family Services entered an agency agreement with the Rock County Health Department. This agreement states that the “agent will enforce the Wisconsin Administrative Code rules for . . . campgrounds” in Rock

County.

Because the Rock County Health Department has been designated the agent of the state responsible for enforcement of campground regulations in Rock County, that department has the final authority to determine whether certain practices comply with regulations. The Department of Health and Family Services' interpretation is not controlling. Instead, the state department is *bound by the actions of its agent*, as explained in the basic definition of agency: "a fiduciary relationship created by express or implied contract or by law, in which one party (the agent) may act on behalf of another party (the principal) and bind that other party by words or actions." Black's Law Dictionary 62 (7th ed. 1999); see also Union Trust Co. of Maryland v. Rodeman, 220 Wis. 453, 472, 264 N.W. 508, 515 (1936); 3 Am. Jur. 2d § 270 (1986). The Rock County Health Department is responsible for determining the legality of specific practices that it observes in Rock County campgrounds and its determinations bind the Department of Health and Family Services as long as the agency agreement is in effect.

C. Legality of The Oaks' In-Ground Bucket System

The Oaks' gray water disposal systems are regulated by Wis. Admin. Code § HFS 178.08 which, as discussed above, is enforced by the Rock County Health Department. Every year that defendants owned The Oaks, from 1988 into 1998, Rock County inspected the

campground and issued an operating permit. Issuance of these permits and the lack of citations on inspection reports indicate that Rock County found The Oaks to be compliant with all applicable regulations, including § 178.08. Implicitly, the county deemed the in-ground bucket disposal method to be legal.

Furthermore, when Rock County inspected The Oaks soon after plaintiff's purchase, it found the gray water disposal method legal just as it had in the past and issued an operating permit to plaintiff in July 1998. The Oaks was compliant with all applicable laws, including § 178.08, before the 1998 sale to plaintiff, at the time of the sale and even after the sale, until May 22, 2000, when Rock County announced it was changing its interpretation of § 178.08.

D. Warranty and Misrepresentation Claims

Plaintiff's warranty and misrepresentation claims are based on the contention that The Oaks was *not* "in compliance with all applicable laws, ordinances, rules and regulations" at the time of sale. Because it *was* compliant, these claims must fail.

Plaintiff's claim that the representation was untrue, deceptive or misleading and therefore violative of Wis. Stat. § 100.18 must also fail. The representation was neither untrue, deceptive or misleading; it was completely accurate. The fact that Rock County has changed its interpretation of § 178.08 has no bearing on the county's determination of defendants'

compliance with the regulation at the time The Oaks was sold. Although plaintiff may have a quarrel with the county and state agencies for their change in enforcement practices, its suit against defendants is without foundation.

ORDER

IT IS ORDERED that the motion of defendants Harold J. Nimmer and Barbara A. Nimmer for summary judgment is GRANTED and the motion for summary judgment by plaintiff Leisure Lifestyles is DENIED. The clerk of court is ordered to enter judgment for defendants and close this case.

Entered this 11th day of December, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge